

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3333 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NAVALSHANKER GAURISHANKER THAKAR

Versus

MAMLATDAR & PRESCRIBED OFFICER

Appearance:

MR BK OZA for MR ND NANAVATI for Petitioner
MR MI HAVA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 16/06/2000

ORAL JUDGEMENT

The petitioner, proprietor of one Hetal Snack Bar, has filed this petition under Article 227 of the Constitution of India.

2. The petitioner was assessed for entertainment tax for organising illegal Video shows in the aforesaid snack bar at village Una, Dist. Junagadh. Proceedings were initiated under section 3, 3(3) and 9 of the Gujarat

Entertainment Tax Act, 1977 (hereinafter referred to as the Act). The petitioner was called upon as to why a sum of Rs.23,607-50 towards entertainment tax as detailed in the notice issued earlier on 8.2.1984 should not be recovered for organising illegal video shows from 12.12.1983 to 31.1.1984. Despite giving notice and granting adjournment, the petitioner did not bother to remain present before the authority either personally or through any representative with any evidence. The petitioner has not availed of the opportunities granted to him. The Assessing Officer, i.e. the Mamlatdar and Prescribed Officer, considering the material placed on record, called upon the petitioner to pay the amount as aforesaid with penalty.

3. Against the aforesaid order, the petitioner preferred Entertainment Tax Appeal No. 1 of 1984 before the Entertainment Tax Collector, Junagadh. The said appeal was not filed within the prescribed period. It was kept for hearing on 7.5.1984. After hearing the learned advocate, the authority even condoned the delay. After considering the submissions made by the Advocate on behalf of the petitioner who appeared before the appellate authority, the appellate authority dismissed the appeal. The appellate authority observed that "on scrutiny of papers, there is sufficient material to arrive at a conclusion with regard to the liability of the petitioner for entertainment tax". The statement of viewers were recorded. Pursuant to that, notice was given and the petitioner did not appear before the Assessing Officer. The appellate authority, on 5th April 1985 dismissed the appeal. It is against this order the present Special Civil Application is preferred.

4. Section 13 of the Act reads as under:-

13.(1). The State Government may, of its own motion, or on application of any aggrieved proprietor made within ninety days from the date of order, call for and examine the record of any proceedings under this Act for the purpose of satisfying itself as to the legality or propriety of any order passed therein by the prescribed officer, or, as the case may be, the appellate authority and if it shall appear, to it that any order passed therein required to be modified, annulled, or reversed, it may, after giving the proprietor affected by such order an opportunity of being heard and after making, or causing to be made, such inquiry as it deems necessary, pass such order thereon as the circumstances of the

case justify :

Provided that no record of any proceeding
of the prescribed officer shall be called for -

- (i). in a case where an appeal from the order
passed therein has been made, when such
appeal is pending, and
- (ii). in a case where an appeal has not been
made from such order, before the expiry
of the time prescribed for making such
appeal

(2). No order shall be revised under section
(1) after the expiry of two years from the date
of such order.

Explanation: In computing the period of
limitation for the purposes of sub-sections (2)
and (3)

- (a). any period during which the record of any
proceeding shall not be called for under
the proviso to sub-section (1), and
- (b). any period during which any proceedings
under this section is stayed by an order
or injunction of any civil court

shall be excluded.

(3). The Commissioner of Entertainments Tax,
where he is not an appellate authority, may on
the application of any aggrieved proprietor made
in that behalf, exercise the powers of the State
Government under sub-section (1):

Provided that no application under this
sub-section by any aggrieved proprietor for
revision of any order shall be entertained by the
Commissioner after the expiry of ninety days from
the date of such order unless the Commissioner is
satisfied that the proprietor was prevented by
sufficient cause from making the application
within that period."

5. The Supreme Court in case of DURGA PRASAD v/s.
NAVEEN CHANDRA REPORTED in (1996) 3 SCC 300 has held that
the order dismissing the application was not appellable

either under section 96 or under order 43 rule 1 read with section 104 of the Civil Procedure Code but still revision under section 115 of Civil Procedure Code would be maintainable and whether the order could be revised or not was a matter to be considered by the High Court on merits. The Supreme Court pointed out that instead of availing that remedy, invoking jurisdiction under Article 226 was not warranted. The procedure prescribed under the C.P.C. cannot be bypassed by availing of the remedy under Article 226. In case of SHEELA DEVI vs. JASPAL SINGH reported in (1999) 1 SCC 209 the Supreme Court held that the High Court wrongly exercised its writ jurisdiction when an alternative statutory remedy of revision was available. No reason was given by the respondent for not availing of the remedy of revision under section 18 of the U.P. Urban Buildings (Regulation of letting, rent and eviction) Act, 1972. The respondent straightaway filed a writ petition before the High Court where the High Court has re-examined the facts. Thus when an alternative remedy is provided under a statute, it becomes the duty of the aggrieved party to approach that forum instead of rushing to the High Court by filing a petition under Article 226 of the Constitution of India. In the instant case as pointed out the aggrieved party was entitled to invoke section 13 of the Act and could have called upon the State Government to decide its application under the aforesaid provision. Thus, though alternative remedy was available to the petitioner, the petitioner has not chosen to avail of that remedy, and therefore this petition must be dismissed on this ground alone.

6. It is very clear that the petitioner could have moved the State Government for exercising revisional jurisdiction. Sub-section (3) makes a clear provision that the Commissioner of Entertainment Tax, on the application made by the aggrieved proprietor, can exercise the powers of the State Government under sub-section (1) if Commissioner of Entertainment Tax was not an appellate authority. Despite the clear provision, the petitioner has hurriedly approached this Court. In view of the provisions as stated hereinabove, as remedy is provided under the Act, it would not be proper for this Court to entertain this Special Civil Application. It would be open for the petitioner to approach the revisional authority who shall consider the facts and circumstances of the case, and shall decide the matter in accordance with law. The petition stands disposed of. The petition is rejected accordingly. Rule is discharged, Interim relief stands vacated. No order as to costs.

[7. After the aforesaid order is passed, learned advocate states that he may be permitted to withdraw this petition with a view to prefer a Revision Application before the competent authority. This wisdom should have been prevailed much earlier. However, by the aforesaid order, I have not closed the doors for the petitioner to approach the Revisional Authority. Infact, I have observed that it would be open for the petitioner to approach the revisional authority. Therefore, it would be open for the petitioner to approach the revisional authority.]

csm/. (B.C. PATEL, J.)